

REMARKS

This is in full and timely response to the non-final Office Action mailed on March 23, 2004. Reexamination in light of the amendments and the following remarks is respectfully requested. Claims 1-10 are currently pending in this application, with claims 1, 6, and 7 being independent.

Rejection under 35 U.S.C. §103

Claims 1-10 are rejected under 35 U.S.C. §103(a) as being unpatentable over Stultz (US5073698) in view of Walk et al (US6614005).

The rejection is traversed at least for the following reasons.

Evidentiary Support

In the Office Action, the Examiner admits that the claims' feature "a B/A is greater than 1.0" is not found within Stultz and Walk et al. Yet the Office Action contends, without providing any evidentiary support, that this feature would have been obvious to the skilled artisan.

In response, this unsupported contention amounts to nothing more than conclusions that are personal in nature. In this regard, the teachings, suggestions or incentives supporting the obviousness-type rejection must be clear and particular. Broad conclusory statements, standing alone, are not evidence. *In re Dembiczak*, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999).

As a rule, "assertions of technical facts in areas of esoteric technology must always be supported by citation to some reference work recognized as standard in the pertinent art and the appellant given, in the Patent Office, the opportunity to challenge the correctness of the assertion or the notoriety or repute of the cited reference." (Citations omitted). *In re Pardo and*

Landau, 214 USPQ 673, 677 (CCPA 1982). The support must have existed at the time the claimed invention was made. *In re Merck & Co., Inc.*, 231 USPQ 375, 379 (Fed. Cir. 1986).

“Allegations concerning specific ‘knowledge’ of the prior art, which might be peculiar to a particular art should also be supported and the appellant similarly given the opportunity to make a challenge.” (Citations omitted). *In re Pardo and Landau*, 214 USPQ 673, 677 (CCPA 1982).

In addition, “it is impermissible, however, simply to engage in a hindsight reconstruction of the claimed invention, using the applicant's structure as a template and selecting elements from references to fill the gaps. The references themselves must provide some teaching whereby the applicant's combination would have been obvious” (citations omitted). *In re Gorman*, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991). See also *In re Dembiczak*, 50 USPQ2d 1614, 1616 (Fed. Cir. 1999)(rejection based upon hindsight is reversed).

Moreover, the procedures established by Title 37 of the Code of Federal Regulations expressly entitle the Applicant to an Examiner's affidavit upon request. Specifically, “when a rejection in an application is based on facts within the personal knowledge of an employee of the Office, the data shall be as specific as possible, and the reference must be supported, when called for by the applicant, by the affidavit of such employee, and such affidavit shall be subject to contradiction or explanation by the affidavits of the applicant and other persons.” 37 C.F.R. 1.104(d)(2).

Also note that the failure to provide any objective evidence to support the challenged use of Official Notice constitutes clear and reversible error. *Ex parte Natale*, 11 USPQ2d 1222, 1227-1228 (Bd. Pat. App. & Int. 1989).

Accordingly, Applicant hereby requests a reference or an Examiner's affidavit to support this officially noticed position of obviousness or what is well known. Further note that if this reference or Examiner's affidavit is not provided, the assertions of what is well known must be withdrawn. See M.P.E.P. §2144.03.

In addition, this assertion amounts to nothing more than an “obvious-to-try” situation. Specifically, “an ‘obvious-to-try’ situation exists when a general disclosure may pique the scientist's curiosity, such that further investigation might be done as a result of the disclosure, but the disclosure itself does not contain a sufficient teaching of how to obtain the desired result, or that the claimed result would be obtained if certain directions were pursued.” *In re Eli Lilly & Co.*, 14 USPQ2d 1741, 1743 (Fed. Cir. 1990). Moreover, “an invention is ‘obvious to try’ where the prior art gives either no indication of which parameters are critical or no direction as to which of many possible choices is likely to be successful.” *Merck & Co. Inc. v. Biocraft Laboratories Inc.*, 10 USPQ2d 1843, 1845 (Fed. Cir. 1989).

Here, the cited prior art does not contain a sufficient teaching of how to obtain the desired result, or that the claimed result would be obtained if certain directions were pursued. “Obvious to try” is not the standard under §103. *In re O'Farrell*, 7 USPQ2d 1673, 1680 (Fed. Cir. 1988).

Withdrawal of this rejection and allowance of the claims is respectfully requested. But if the allowance of claims 1-10 is not forthcoming at the very least and a new grounds of rejection made, then a **new non-final Office Action** is respectfully requested.

Unexpected Results

Furthermore, as a rule, “one way for a patent applicant to rebut a prima facie case of obviousness is to make a showing of ‘unexpected results,’ i.e., to show that the claimed invention exhibits some superior property or advantage that a person of ordinary skill in the relevant art would have found surprising or unexpected.” *In re Geisler*, 43 USPQ2d 1362, 1365 (Fed. Cir. 1997).

“All evidence of nonobviousness must be considered when assessing patentability.” *Richardson-Vicks Inc. v. The Upjohn Co.*, 44 USPQ2d 1181, 1186 (Fed. Cir. 1997).

“Consistent with the rule that all evidence of nonobviousness must be considered when assessing patentability, the PTO must consider comparative data in the specification in

determining whether the claimed invention provides unexpected results.” In re Soni, 34 USPQ2d 1684, 1687 (Fed. Cir. 1995). See also, In re Wright, 6 USPQ2d 1959, 1962 (Fed. Cir. 1988).

Fig. 5 of the specification as originally filed provides a chart showing results of experiment wherein the intensity ratio is measured, changing parameters. Thus, a comparison between comparative examples and the claimed invention has been provided within the specification, in which unexpected results are shown in terms of the number of cracked wafers.

“An applicants relying on comparative tests to rebut a prima facie case of obviousness must compare his claimed invention to the closest prior art.” In re De Blauwe, 222 USPQ 191, 196 (Fed. Cir. 1984). Akagi, Tsuneta, Inoue, Greenen, and Park are the closest cited prior art.

The closest prior art cited in the Office Action is Stultz and Walk et al.

Stultz arguably discloses a method for heating a film on a substrate wherein a specimen (combined film and substrate) is illuminated by light having a maximum intensity at a wavelength which will be substantially absorbed by the film and substantially not absorbed by the substrate.

Walk et al. arguably discloses a device and method for thermally treating substrate in which the radiation characteristic for each arc lamps are individually controlled, wherein the emission spectrum of the radiation has a maximum at approximately 350 nm (column 5, lines 55-57).

Stultz fails to show unexpectedly superior results since it is not close to the present invention and does not disclose or teach even the relationship of the integrated radiant intensity A and the integrated radiant intensity B, that is “a B/A is greater than 1.0

Also, Walk et al. fails to show unexpectedly superior results since it is not close to the present invention and only discloses that the emission spectrum of the radiation has a maximum at approximately 350 nm (column 5, lines 55-57). Thus it fails to disclose the relationship of the integrated radiant intensity A and the integrated radiant intensity B.

Walk et al. and Stultz fail to disclose the relationship of the integrated radiant intensity A and the integrated radiant intensity B. Accordingly, Walk et al. and Stultz fail to show unexpectedly superior results produced by the relationship of the integrated radiant intensity A and the integrated radiant intensity B.

Thus, withdrawal of this rejection is respectfully requested.


Conclusion

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 18-0013, under Order No. UDK-010 from which the undersigned is authorized to draw.

Dated: June 22, 2004

Respectfully submitted,

By 
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